

ID: CCA\_2008070814264452

Number: **200911010**

Release Date: 3/13/2009

Office:

UILC: 381.02-00

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**From:**

**Sent:** Tuesday, July 08, 2008 2:26:45 PM

**To:**

**Cc:**

**Subject:** Acquiring corporation

This email confirms our discussions concluding that \_\_\_\_\_ is the acquiring corporation for purposes of § 381 and retains all the earnings and profits received from the acquired corporation, \_\_\_\_\_. As we discussed, \_\_\_\_\_ acquired the assets of \_\_\_\_\_ in a § 368(a)(1)(D) reorganization. Pursuant to the plan of reorganization, \_\_\_\_\_ transferred all of the acquired assets to its subsidiary, which in turn transferred a portion of the acquired assets to its subsidiary (two tiers below \_\_\_\_\_). Accordingly, no one corporation ultimately held all the assets of \_\_\_\_\_.

Section 1.381(a)-1(b)(2)(i) provides that only a single corporation may be the acquiring corporation and provides that in a transaction to which § 381(a)(2) applies, the acquiring corporation is that corporation which pursuant to the plan of reorganization, ultimately acquires, directly or indirectly, all of the assets transferred by the transferor corporation. If in a transaction qualifying under § 381(a)(2), no one corporation ultimately acquires all of the assets transferred by the transferor corporation, that corporation which directly acquires the assets so transferred shall be the acquiring corporation for the purposes of § 381 and the regulations thereunder, even though such corporation ultimately retains none of the assets so transferred. Accordingly, under the facts above, \_\_\_\_\_ is the acquiring corporation for purposes of § 381, and thus, \_\_\_\_\_ retains all the earnings and profits received from the acquired corporation \_\_\_\_\_.

Should you require any additional information, please call.